

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.¹

PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**RE: ECF Nos. 3513, 3544 and
3604**

**AAFAF’S OMNIBUS RESPONSE TO MOTIONS TO COMPEL PAYMENT FILED BY
THE RETIREE COMMITTEE [ECF NO. 3513], COFINA AGENT [ECF NO. 3544],
AND UNSECURED CREDITORS’ COMMITTEE [ECF NO. 3604]**

The Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”), as the entity authorized to act on behalf of the Commonwealth of Puerto Rico (the “Commonwealth”), pursuant to the authority granted to it under the Enabling Act of the Fiscal Agency and Financial Advisory Authority, Act 2-2017, respectfully submits this response (the “Response”) to the: (i) *Urgent Motion to Compel the Puerto Rico Department of Treasury to Comply with the First and Second Amended Orders Setting Procedures for Interim Compensation and Reimbursement of Expenses of Professionals filed by the Official Committee of Retired Employees of the Commonwealth of*

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747). (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

Puerto Rico (the “Retiree Committee”) [ECF No. 3513]; (ii) Urgent Motion to Compel the Puerto Rico Department of Treasury to Comply with the Orders Setting Procedures for Interim Compensation and Reimbursement of Expenses of Professionals filed by Bettina M. Whyte (the “COFINA Agent”) [ECF No. 3544]; and (iii) Urgent Motion, Pursuant to Bankruptcy Code Section 105(a), to Compel Debtors to Comply with Interim Compensation Orders and Joinder in Motions of Retiree Committee and COFINA Agent to Compel Compliance with the Same filed by the Official Committee of Unsecured Creditors of all Title III Debtors (other than COFINA) (the “Unsecured Creditors’ Committee”) [ECF No. 3604] (collectively, the “Motions to Compel Payment”).

PRELIMINARY STATEMENT

The Motions to Compel Payment request that the Court order the Puerto Rico Department of Treasury (“Treasury”) to pay certain outstanding Fee Statement, Holdback and Withholding Amounts (each as defined below) due to the professionals representing the Retiree Committee, the COFINA Agent and the Unsecured Creditors’ Committee. AAFAF has been working diligently with Treasury to address the issues raised by the motions and to pay the outstanding fees and expenses due to all professionals in the Title III Cases.

As of the filing of this motion, several of the pending Fee Statement Amounts have been paid by Treasury and as detailed below, Treasury expects to have made such payment amounts due for pending Fee Statements and Court-approved Holdback Amounts on or prior to July 25, 2018. Any remaining amounts relate to discrepancies between Treasury’s and the professional’s respective records of payments and amounts due, are minimal or substantially less than the amounts requested in the Motions to Compel Payment for Fee Statement and Holdback Amounts,

and can and should be reconciled by the parties first, without prejudice to any party requesting remedies from the Court if such reconciliation is unsuccessful.

The remaining amounts pending payment are the Withholding Amounts, which correspond to tax withholdings made by Treasury on previous payments made to certain professionals and for which Puerto Rico law establishes a procedure to be followed for these amounts to be reimbursed. To expedite the payment of Withholding Amounts to all professionals, Treasury, in coordination with AAFAF, developed a procedure that complies with Puerto Rico tax withholding law and provides: (a) that any inapplicable amounts so withheld can be returned to the professionals in an expedited manner, and (b) that inapplicable withholdings can be prevented in future payments. Accordingly, AAFAF respectfully requests that the Court allow the reimbursement procedure established by Treasury and detailed below and in Exhibit A to continue, which is resolving and should continue to resolve the pending payments of Withholding Amounts in an expedited manner that complies with Puerto Rico tax withholding law.

BACKGROUND

On November 8, 2017, the Court entered the *First Amended Order Setting Procedures for Interim Compensation and Reimbursement of Expenses of Professionals* (the “First Interim Compensation Order”) [ECF No. 1715] outlining the procedure to be followed for the request and payment of fees and expenses rendered by professionals in the Title III Cases.

Pursuant to the First Interim Compensation Order, as amended, through monthly fee statements and the procedure established therein, 90% of fees and 100% of expenses requested must be paid within fourteen days after the ‘Monthly Objection Statement’ (indicating whether objections to the monthly fee statement were received) is served (each such amounts due under

pending fee statements, the “Fee Statement Amounts”). The 10% holdback amount for fees is paid under the First Interim Compensation Order, as amended, once the Court approves the interim fee applications filed by such professional on a quarterly basis (each such amounts due for approved holdbacks, the “Holdback Amounts”).

On June 6, 2018, the First Interim Compensation Order was amended (the “Second Interim Compensation Order”) [ECF No. 3269] to clarify, among other things, that all professionals must comply with Puerto Rico’s tax withholding law. To this date, the Court has entered three Omnibus Orders allowing the interim compensation of professionals for services rendered and approving therein payment of Holdback Amounts [ECF Nos. 2685, 2911 and 3279].

As part of certain payments made by Treasury before June 30, 2018 to professionals that are not engaged in business in Puerto Rico, as detailed below, Treasury made a 29% tax withholding from such payments for amounts corresponding to services that such professional asserts were rendered outside of Puerto Rico and, thus, such professional asserts that no tax withholding should have been made (each such amount, the “Withholding Amount”).

OMNIBUS RESPONSE

A. Request for Payment of Outstanding Fees and Expenses in the Motions to Compel Payment and Payments Made to Date

Through the Motions to Compel Payment, the professionals request payment of amounts due for Fee Statement, Holdback and Withholding Amounts.

Specifically, the Retiree Committee requests payment of the following Fee Statement, Holdback, and Withholding Amounts, and, as detailed below, the following amounts have already been paid by Treasury:

RETIREE COMMITTEE

PROFESSIONAL	FEE STATEMENT AMOUNTS DUE²	FEE STATEMENT AMOUNTS PAID³	HOLDBACK AMOUNTS DUE	HOLDBACK AMOUNTS PAID	WITHHOLDING AMOUNTS DUE	WITHHOLDING AMOUNTS PAID
Jenner & Block LLP	\$398,791.95	\$387,166.67	\$148,339.81	\$0.00	Requested without specifying amount in the Motion to Compel.	
Bennazar, Garcia, Milián, C.S.P.	\$95,962.21	\$89,820.89	\$21,001.73	\$0.00		
FTI Consulting	\$540,807.85	\$538,703.76	\$72,727.15	\$0.00		
Segal Consulting	\$122,421.59	\$100,863.22	n/a	n/a		
Marchand ISC	\$21,571.17	\$20,197.58	Requested without specifying amount.	n/a		

The COFINA Agent requests payment of the following Fee Statement, Holdback, and Withholding Amounts, and, as detailed below, the following amounts have already been paid by Treasury:

COFINA AGENT

PROFESSIONAL	FEE STATEMENT AMOUNTS DUE⁴	FEE STATEMENT AMOUNTS PAID⁵	HOLDBACK AMOUNTS DUE	HOLDBACK AMOUNTS PAID	WITHHOLDING AMOUNTS DUE	WITHHOLDING AMOUNTS PAID
Bettina M. Whyte	\$314,073.61	\$0.00	\$16,094.50	\$0.00	n/a	n/a
Willkie Farr & Gallagher LLP	\$3,635,860.38	\$0.00	\$501,912.39	\$0.00	\$385,055.81	\$0.00
Klee, Tuchin, Bogdanoff & Stern LLP	\$581,063.79	\$0.00	\$31,116.30	\$0.00	n/a	n/a

² This table includes the Fee Statement Amounts requested by the professionals in the Motions to Compel Payment.

³ This table includes the payment of the Fee Statement Amounts requested in the Motions to Compel Payment. Additional Fee Statement Amounts due but not included in the Motions to Compel have also been paid.

⁴ This table includes the Fee Statement Amounts requested by the professionals in the Motions to Compel Payment.

⁵ This table includes the payment of the Fee Statement Amounts requested in the Motions to Compel Payment. Additional Fee Statement Amounts due but not included in the Motions to Compel have also been paid.

Navarro-Cabrer Law Offices	\$34,285.00	\$14,501.03	\$9,519.25	\$0.00	n/a	n/a
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Finally, the Unsecured Creditors' Committee requests payment of the following Fee Statement, Holdback, and Withholding Amounts, and, as detailed below, the following amounts have already been paid by Treasury:

UNSECURED CREDITORS COMMITTEE

PROFESSIONAL	FEE STATEMENT AMOUNTS DUE⁶	FEE STATEMENTS AMOUNTS PAID⁷	HOLDBACK AMOUNTS DUE	HOLDBACK AMOUNTS PAID	WITHHOLDING AMOUNTS DUE	WITHHOLDING AMOUNTS PAID
Paul Hastings, LLP	n/a	n/a	n/a	n/a	\$537,854.80	\$517,292.82
Kroma Advertising, Inc.	\$73,509.35	\$69,729.35	n/a	n/a	n/a	n/a

Finally, AAFAF will file a motion informing the Court of the updated payments made on or before July 24, 2018.

B. Pending Amounts Due for Fee Statement and Holdback Amounts

As detailed above, as of today, several of the pending Fee Statement Amounts have been paid by Treasury. Treasury expects to have made such payment for amounts due for pending Fee Statements and Court-approved Holdback Amounts on or prior to July 25, 2018. While there may be discrepancies between the amounts asserted as due and paid by Treasury and the amounts still asserted as pending by each professional for Fee Statement and Holdback Amounts, AAFAF submits that it has been working with each professional and Treasury to reconcile these amounts

⁶ This table includes the Fee Statement Amounts requested by the professionals in the Motions to Compel Payment.
⁷ This table includes the payment of the Fee Statement Amounts requested in the Motions to Compel Payment. Additional Fee Statement Amounts due but not included in the Motions to Compel have also been paid.

and resolve any pending discrepancies and that, considering the progress to date, these matters can and should be resolved between the parties, without prejudice to any party requesting remedies from the Court if these amounts are not reconciled and so resolved.

C. Pending Amounts Due for Withholding Reimbursements

The Motions to Compel Payment also request payment of the Withholding Amounts, for tax withholdings made by Treasury on prior payments made to professionals. These withholdings were made under Puerto Rico's tax law, as provided under the Second Interim Compensation Order⁸.

The Second Interim Compensation Order provides that all professionals "shall comply with Puerto Rico tax withholding law, to the extent applicable to each Professional." See, paragraph 9 of the Second Interim Compensation Order. As Treasury detailed in the memorandum circulated to all professionals and included as **Exhibit A**, Sections 1062.08 and 1062.11 of the Puerto Rico Internal Revenue Code of 2011, as amended, require that any person making payments for services rendered, including Treasury, withhold 29% of the amounts due in the case of foreign corporations and partnerships that are not engaged in trade or business in Puerto Rico for the services they render in Puerto Rico. Accordingly, Treasury withheld 29% on certain payments made through June 30, 2018 to professionals that are not engaged in business in Puerto Rico, as it had insufficient information regarding (i) whether such professional rendered its services in or outside of Puerto Rico, and, (ii) the amount of services rendered in or outside of Puerto Rico.

⁸ Tax withholding laws, as clarified by the Second Interim Compensation Order, apply to payments to Title III professionals and, thus, Treasury has applied Puerto Rico tax withholding laws to payments made throughout the Title III Cases prior to the entry Second Interim Compensation Order.

Since the entry of the Second Interim Compensation Order, AAFAF has worked with Treasury to develop a procedure, under Puerto Rico's tax withholding law, to reimburse the Withholding Amounts for services rendered by these professionals outside of Puerto Rico, and to ensure that withholdings for such amounts can be avoided in future payments, if such professional provides the requisite information. Treasury, through AAFAF, has provided guidance and instructions to all professionals to avoid inapplicable withholdings in the future, including but not limited to, instructions on the segregation of services performed in Puerto Rico from services performed outside of Puerto Rico in all future monthly fee statements served and the forms and certifications required for reimbursement of Withholding Amounts and avoiding future inapplicable withholdings.

Specifically, on July 17, 2018, Treasury, through AAFAF, circulated the guidelines on **Exhibit A** to all professionals. See, copy of email communication attached herein as **Exhibit B**. The guidelines and procedures, detailed on **Exhibit A**, provide the process to expedite the payment of Withholding Amounts and avoid future withholdings for services rendered outside of Puerto Rico. Since then, Treasury has been able to process and start to reimburse Withholding Amounts to professionals, upon receipt of the documents detailed on **Exhibit A**. Accordingly, AAFAF respectfully requests that the Court allow the reimbursement procedure established by Treasury to continue, which should resolve the pending payments of Withholding Amounts in a manner that complies with Puerto Rico tax withholding law.

WHEREFORE, AAFAF respectfully requests that this Court (i) take notice of the above, (ii) allow the parties to reconcile any pending amounts for Fee Statement and Holdback Amounts, without prejudice to any party requesting remedies from the Court if such reconciliation is unsuccessful, (iii) allow the process to pay the Withholding Amounts detailed on **Exhibit A** to

continue, (iv) deny the *Urgent Motion to Compel the Puerto Rico Department of Treasury to Comply with the First and Second Amended Orders Setting Procedures for Interim Compensation and Reimbursement of Expenses of Professionals filed by the Official Committee of Retired Employees of the Commonwealth of Puerto Rico* [ECF No. 3513]; *Urgent Motion to Compel the Puerto Rico Department of Treasury to Comply with the Orders Setting Procedures for Interim Compensation and Reimbursement of Expenses of Professionals* [ECF No. 3544]; and *Urgent Motion, Pursuant to Bankruptcy Code Section 105(a), to Compel Debtors to Comply with Interim Compensation Orders and Joinder in Motions of Retiree Committee and COFINA Agent to Compel Compliance with the Same* [ECF No. 3604], and (v) grant any further relief the Court deems just and proper.

Dated: July 20, 2018
San Juan, Puerto Rico

Respectfully submitted,

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